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NEWS

Electronic signing—the new normal for Queensland

In 2020, during the midst of the pandemic, the Queensland Government introduced temporary measures to assist with the electronic execution of documents. Recently, the Justice Legislation (COVID-19 Emergency Response—Permanency) Amendment Bill (Bill) was introduced to make some of those temporary measures permanent, including for deeds, affidavits, statutory declarations and oaths.

Here, Real Estate lawyer Matt Dolan provides an update on the ‘new normal’ for electronic signing of documents in Queensland.

DEEDS

The Bill removes the current requirements for deeds to be executed on paper, parchment or vellum and for an individual’s signature to be witnessed. This means a deed can be electronically executed, whether by a company or an individual.

The Bill aims to remove the uncertainty and ambiguity surrounding electronic execution of deeds and clarifies the way a corporation can execute a deed to ensure compliance with s127 of the Corporations Act (which in turn permits people to make assumptions about proper execution).

ACCEPTED METHOD FOR EXECUTING DEEDS

Currently, the Bill provides for electronic signing by using an ‘accepted method’. This includes a method which—

- identifies the signatory and the signatory’s intention in relation to the contents of the document
- is as reliable as appropriate for the purposes of the document, and
- is consented to by all the signatories to the document.

An accepted electronic signature includes the following:

- a typed name
- facsimile of a signature
- a DocuSign signature, or another digital signature using public key infrastructure through a digital signature solution provider
- an email signature block
- handwriting a signature using a stylus or finger on a touch sensitive screen

- inserting an image of a wet signature (handwritten).
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EXECUTION IN COUNTERPARTS

The Bill also allows deeds to be made in counterparts and by split execution. Essentially, if two directors are signing, the directors can sign separate counterparts of the deed and the respective counterpart does not need to include the signature of the other director or secretary.

AFFIDAVITS AND STATUTORY DECLARATIONS

The Bill also allows for affidavits and statutory declarations to be made in the form of an electronic document and witnessed via audio-visual link, provided the witness is a 'special witness' which includes—

- an Australian lawyer
- a government approved JP or Commissioner for Declarations
- a notary public.

For affidavits and statutory declarations witnessed in person, the Bill also allows them to be signed electronically and made in counterparts if they are witnessed by a special witness or a prescribed person. However, counterparts cannot be used where they are physically signed.

POWERS OF ATTORNEY

The Bill allows powers of attorney for businesses (corporations, partnerships and unincorporated associations, but not sole traders) to be signed electronically, in counterparts and by split execution.

The Bill further aims to simplify the execution requirements for corporations by removing the requirement for signatures to be witnessed (other than for general powers of attorney lodged with the land registry office in relation to land or water allocations dealings).

WHAT HAPPENS NEXT?

We will provide more details when the Bill passes. In the meantime, if you need further information about these proposed permanent changes, please contact a member of our team.

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